

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF)
DELMARVA POWER & LIGHT COMPANY FOR)
AN INCREASE IN ELECTRIC BASE RATES) PSC DOCKET NO. 13-115
(FILED MARCH 22, 2013))

**OBJECTION OF THE PUBLIC ADVOCATE TO DELMARVA POWER & LIGHT
COMPANY’S MOTION TO STAY EVIDENTIARY HEARINGS**

David L. Bonar, Public Advocate for the State of Delaware, by and through his counsel, hereby objects to the Motion of Delmarva Power & Light Company (“Delmarva” or the “Company”) to Stay Evidentiary Hearings (the “Motion”), and in support thereof states as follows:

1. On March 22, 2013, Delmarva filed an application with the Commission seeking to increase base electric distribution rates by \$42 million (the “Rate Case Application”). The Commission suspended the proposed rate increase and appointed a hearing examiner to conduct evidentiary hearings on the justness and reasonableness of Delmarva’s request. The Hearing Examiner issued a procedural schedule which, among other things, scheduled evidentiary hearings to take place on November 13, 14 and 18, 2013.

2. The Commission Staff, the Public Advocate and Intervenor Delaware Energy Users Group (“DEUG”) retained consultants to investigate Delmarva’s Rate Case Application. In addition, the Commission Staff requested the Commission to open an investigation into Delmarva’s planned reliability investments over the next several years, which Delmarva had discussed in the prefiled direct testimony accompanying its Application. The Commission opened a docket to examine Delmarva’s planned reliability investments in May 2013 (the “Reliability Investigation”), and Commission Staff retained a consultant for the Reliability Investigation.¹

3. On October 2, 2013, Delmarva filed with the Commission what it called a “policy filing” titled “Proposed Forward Looking Rate Plan” (“FLRP”). The FLRP filing arose out of the settlement

¹ In an effort to reduce costs and avoid duplication, the Public Advocate is sharing the consultant with the Commission Staff.

agreement in Docket No. 11-528 (Delmarva's most recently completed base electric distribution rate case) in which, among other things, Delmarva, the Commission Staff and the Public Advocate agreed to meet and discuss alternative regulatory methodologies, including but not limited to multi-year rate plans, and the establishment of more stringent minimum reliability standards. As the Motion acknowledges, the Public Advocate did not have the opportunity to review the details of the proposed FLRP before Delmarva filed it with the Commission. (Motion at 5).

4. According to the cover letter accompanying the FLRP application, Delmarva began working "in earnest" to develop an alternative regulatory methodology "immediately" following the Commission's approval of the Docket 11-528 settlement. While the current Public Advocate lacks knowledge of the number of times the former Public Advocate discussed the general parameters of an FLRP either in person or by phone, he acknowledges that the former Public Advocate did conduct such discussions with representatives of Delmarva and the Commission Staff.

5. Sometime in March 2013 (before the Company filed the pending base rate case), a meeting took place at the Company's offices at which it distributed a proposed multi-year rate plan. The Company hosted another meeting at its offices in May 2013, at which both Staff representatives and the then-acting Public Advocate (the Department of Justice's Deputy State Solicitor) identified numerous deficiencies in the multi-year rate plan with which they had been provided.

6. Meanwhile, the pending request for an increase in base electric distribution rates continued apace. The Commission Staff and Public Advocate's consultants conducted significant discovery on the elements of Delmarva's Rate Case Application, and in August 2013 submitted prefiled testimony contesting various elements of Delmarva's Rate Case Application. Delmarva conducted similarly significant discovery on the Commission Staff, the Public Advocate and DEUG. In September 2013, Delmarva filed rebuttal testimony in the Rate Case Application (in which it reduced its requested revenue requirement increase to \$38 million), and subsequently responded to discovery from the parties on its rebuttal testimony. As noted previously, the evidentiary hearings on the Rate Case Application are

set to begin on November 13, 2013 – just three weeks from the date of this Commission’s consideration of Delmarva’s Motion.

7. The Commission Staff’s and the Public Advocate’s consultant in the Reliability Investigation has participated in informal discovery conferences with Delmarva representatives. However, there is no schedule governing the Reliability Investigation, and thus no deadline for the consultant to submit her findings and conclusions.

8. On September 12, 2013, the Company requested approval pursuant to 26 *Del. C.* §306 to implement an additional interim base electric distribution rate increase of approximately \$25 million effective with service on and after October 22, 2013 (which would enable the Company to collect a total of \$27 million in interim rates pending the resolution of the Rate Case Application). The Commission granted its approval on October 8, 2013.

8. On October 2, 2013, Delmarva filed the FLRP. Stripped down to its most basic level, the FLRP would increase base electric distribution rates by \$56 million over four years.

9. Delmarva now proposes to put the Rate Case Application on hold while the parties explore the FLRP. If the parties are able to reach a mutually acceptable agreement on the construct of an FLRP, Delmarva envisions that such agreement will also resolve both the Rate Case Application and the Reliability Investigation. (Motion at 6-7).

10. The Public Advocate has reviewed the FLRP and has discussed the proposed FLRP with its rate design consultant in the Rate Case Application. Although that review has necessarily been fairly cursory given the short amount of time since its filing and the fact that no party has even begun to examine its elements, the Public Advocate has determined that he cannot support the proposed FLRP. Given that determination, the Public Advocate believes that the Rate Case Application should proceed as scheduled. Thus, he respectfully objects to the Motion.

ARGUMENT

A. The Proposed FLRP Has Too Many Flaws To Serve As A Basis For Staying The Rate Case Application.

11. The Motion describes concessions that Delmarva has made in an effort to secure the Commission Staff's and the Public Advocate's agreement to its stay request, the most important of which from the ratepayers' perspective are: (1) reducing the total amount of interim rates it will place into effect pending the resolution of the parties' consideration of the FLRP to \$19 million; and (2) automatically and immediately reducing this interim rate amount to \$16.5 million (the amount of the increase in the first year of the FLRP) if the parties agree on an FLRP between October 2013 and February 2014. (Motion at 7). The Public Advocate appreciates these concessions and acknowledges that his opposition to the requested stay seems counterintuitive: after all, Delmarva's ratepayers do receive a benefit from lower interim rates while the Rate Case Application is stayed, whereas Delmarva would be statutorily entitled to place an additional \$25 million of interim rates into effect on October 22 if the Rate Case Application is not stayed. However, the fact is that if the Commission approves a rate increase of less than \$27 million (the total amount of the interim rate increase that Delmarva could place into effect), ratepayers are entitled to a refund at the Commission-approved interest rate. The Public Advocate is not convinced that the lower interim rates that would only be in effect for four months or so provide a large enough benefit to delay deciding the Rate Case Application. He *is* convinced that the proposed FLRP has significant flaws and provides no benefit to ratepayers, and cannot conceive at this point how it could be amended to provide *any* benefit to ratepayers. Moreover, he is troubled by the timing of the FLRP application, coming as it did only a month before the Rate Case Application evidentiary hearings. We discuss these grounds of opposition below.

1. The Proposed FLRP Does Not Benefit Ratepayers.

12. Delmarva claims that ratepayers will benefit from having "reasonable and known" distribution rates over the duration of the FLRP. (FLRP Application – Moore Direct at 27). That is not necessarily so. Delmarva admits that it would be permitted to petition the Commission for rate

adjustments when governmental entities make changes to laws governing the Company; for “extraordinary events that substantially affect costs or otherwise cause unanticipated financial hardship;” and to implement the recovery of regulatory assets that the Commission has already approved. (*Id.* at 11-10). These caveats demonstrate that the promise of known distribution rates is ephemeral.

13. Even if it were the case that distribution rates would be known, the fact is that electric supply costs comprise from two-thirds to three-quarters of a typical customer’s total bill. (*Id.* at 9). And the Public Advocate suspects that most customers are less concerned with the individual components of their electric bills than with the total *amount* of their electric bills. Thus, the Public Advocate does not view this as a benefit to ratepayers.

14. Delmarva next contends that ratepayers will benefit from the improved minimum level of reliability that the FLRP will commit it to achieve. The FLRP will not cause Delmarva to improve its level of reliability: it has been exceeding the current SAIDI target for several years and over the last three years has exceeded even the lowest proposed minimum SAIDI target of 179. (See Dismukes Direct, Schedule DED-2, citing Delmarva’s response to Date Request PSC-CP-6). Ratepayers are already experiencing the benefit of improved reliability; only if the SAIDI targets are reduced to a level that truly reflects improved reliability from the FLRP will ratepayers see a benefit from the FLRP.

15. Last, Delmarva contends that ratepayers benefit from reduced regulatory process costs. (FLRP Application – Moore Direct at 28). It states that the incremental cost of a rate case is \$650,000; thus, assuming annual rate case filings, an FLRP would save ratepayers \$2.6 million. (*Id.*). If \$650,000 of rate case expense saves ratepayers millions of dollars in increased rates, then *that* is one of the most (if not *the* most) cost-effective expenditure in the rate-making process. Using the current Rate Case Application as an example, the Company’s requested revenue requirement increase is \$38 million; Staff’s filed position is an \$11 million revenue requirement increase; and the Public Advocate’s filed position is a \$7 million revenue requirement increase. If the Commission approves a \$27 million increase, \$650,000 has been spent to save \$11 million. (The Public Advocate is not suggesting that the Commission *should* decide that \$27 million is the appropriate revenue requirement increase; he is merely using that number

for illustrative purposes). Under that example, the Public Advocate respectfully submits that that \$650,000 was a very good investment indeed. Even spending \$2.6 million to obtain an \$11 million reduction in the requested revenue requirement would be worthwhile.

16. Delmarva claims that significant rate case expenses can be avoided if the Rate Case Application is stayed pending the parties' examination of the FLRP. (Motion at 6). The Public Advocate does not dispute that some rate case expense will be avoided if a settlement is ultimately reached; however, the parties have already incurred significant expense to date. The Rate Case Application is nearly ready for hearing. All of the time spent conducting discovery, drafting testimony and responding to discovery will have been for nothing. And that expense is not small: while the Public Advocate does not have information regarding the cost of DEUG's consultant,² the Commission's and the Public Advocate's consultant contracts for the Rate Case Application total nearly \$200,000. At this point, there is little left for the consultants to do except testify at the evidentiary hearing. Thus, the consultant costs for the Rate Case Application are already "sunk."

17. Delmarva cites 26 *Del. C.* §512(c) in support of its request for a stay, contending that granting the stay may lead to resolution of the Rate Case Application, the Reliability Investigation and the FLRP. (Motion at 5-6). The Public Advocate does not dispute that it could do so. However, he notes that the Rate Case Application Schedule contained dates for a mandatory settlement conference on October 16-17, 2013. While the parties met on October 16, Delmarva was not prepared to discuss settlement of Docket No. 13-115. Rather, the entire discussion revolved around its request to stay Docket No. 13-115.

18. In short, none of the supposed "ratepayer benefits" that Delmarva proffers truly benefits ratepayers; there are numerous benefits for the Company however. It would be a waste of all parties' valuable time to stay the Rate Case Application pending discussion of the proposed FLRP.

² DEUG's consultant only addressed a specific cost of service and rate design issue, whereas the Commission Staff's and the Public Advocate's consultants addressed revenue requirement, cost of capital, cost of service and rate design issues.

2. Other Flaws of the FLRP

19. In addition to the fact that Delmarva is already surpassing the “improved” reliability metrics and that the “stay out” is not really a “stay out,” there are other flaws in the proposed FLRP. First, Delmarva proposes a 9.75% allowed return on equity in the third year of the FLRP. Since Delmarva will be *guaranteed* a revenue stream, its risk will be significantly reduced. Why then should it be permitted the same return on equity that the Commission has found appropriate for greater risk?

20. The FLRP’s proposed \$500,000 refund to customers if Delmarva does not attain the “improved” reliability metrics is a problem for two reasons. First, as already discussed, Delmarva is already exceeding even the proposed “improved” SAIDI target; thus, there is little chance that it will ever have to refund anything to ratepayers. Second, even if there was some chance that Delmarva might not reach the reliability targets, \$500,000 is not a sufficiently large penalty to deter using the guaranteed revenues for reliability improvements rather than on some other expense. In light of the fact that the FLRP projects collection of some \$379 million for capital investments over the life of the FLRP (see FLRP Application, Moore Direct at 23), a \$500,000 penalty is hardly an effective deterrent. This facet of the proposed FLRP is akin to offering the sleeves from a vest; it appears to offer ratepayers something, but in reality it gives nothing.

21. With respect to the capital investment, the Public Advocate has already observed that there is no schedule in the Reliability Investigation; however, the Motion envisions having an agreement on the FLRP before the end of February 2014. There can be no assurance that the Reliability Investigation will be concluded by that time, but the Motion envisions the Reliability Investigation being subsumed within an agreed-upon FLRP. The Public Advocate is unwilling to assume that the Reliability Investigation will be concluded in time for it to be incorporated into any potential FLRP resolution, and is equally unwilling to hamstring his responsibilities in both the Reliability Investigation and the FLRP application to examine the Company’s projections and planned investments.

22. In short, there are simply too many questions surrounding the proposed FLRP to delay the Rate Case Application. The Rate Case Application is ready to proceed; the funds to prosecute this

case have already been spent. The Public Advocate respectfully submits that the Commission should let the case proceed to a conclusion.

3. The Timing of the FLRP Application.

23. The last time that the Public Advocate's office had any discussions with Delmarva regarding a FLRP was in May. The Public Advocate does not know why it took four months to submit the proposed FLRP. But what the Public Advocate does know is that Delmarva controlled the pace of work on the FLRP proposal and the time of its filing. Had Delmarva submitted the proposed FLRP before the vast majority of the pre-Rate Case Application hearing work was done, perhaps the Public Advocate might be more open to the stay request. But all that work has now been performed, and all that money has now been spent. In addition, all parties and consultants have arranged their schedules in anticipation of the hearings taking place as scheduled. The Public Advocate sees no advantage to staying the Rate Case Application under these circumstances.

WHEREFORE, the Public Advocate respectfully requests the Commission to deny the Motion and to allow the Rate Case Application evidentiary hearing to proceed as scheduled.

Respectfully submitted,

/s/ Regina A. Iorii

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